

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
BOX ELDER CREEK BASIN (39E)
PRELIMINARY DECREE

CLAIMANTS: O'Connor Ranch Lands, LLC; Wolff Ranch
Inc.

CASE 39E-0516-R-2023
39E 38425-00
39E 38427-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

The above-captioned claims appeared in the Preliminary Decree were decreed with the following remarks:

39E 38425-00:

THE WATER COURT FINDS NO LEGAL BASIS FOR THIS PURPOSE TO BE CONSIDERED A BENEFICIAL USE OR AN APPROPRIATION OF WATER.

A GUIDELINE FOR THE FLOW RATE AND VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND FLOW RATE AND VOLUME REMAIN AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE AND VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE AND VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

39E 38427-00:

A GUIDELINE FOR THE FLOW RATE AND VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND FLOW RATE AND VOLUME REMAIN AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE AND VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE AND VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

These remarks were not addressed through the objection process. The Water Court is required to resolve the issue raised by an issue remark. Section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimants an opportunity to file additional information or evidence.

FINDINGS OF FACT

1. The remark questioning the legal basis for claim 39E 38425-00 is no longer applicable as the legal basis of the claim has been confirmed by the Montana Supreme Court.

2. The remaining remarks state that the claimed flow rates and volumes could be contested by proper objection. The remarks further state that if no objections were filed that the flow rate and volume would be decreed as claimed. No objections were filed, pursuant to the text of the remark the flow rates and volumes should be decreed as claimed in the Statements of Claim and the remarks should be removed.

PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(13), MCA.

2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the

elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

3. Fish, wildlife, and recreation are beneficial uses, and a diversion is not necessary to appropriate water for such uses where notice of the appropriator's intent is given. See *In re Adjudication of Existing Rights to the Use of all Water*, 2002 MT 216, 311 Mont. 327 (overruling *Matter of the Adjudication of Existing Rights in Basin 411*, 2002 MT 216, 311 Mont. 327).

CONCLUSION OF LAW

1. The issue remarks should be removed from the claims as discussed above.

RECOMMENDATIONS

1. Upon review the record in this case, the issue remarks on the above-captioned claims should be removed as discussed above. The originally claimed flow rate and volume for the claims should be reinstated pursuant to the text of the remarks.

Post Decree Abstracts of Water Right Claims are attached to this Master's Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

O'Connor Ranch Lands, LLC
203 Kim Curry Rd.
Ekalaka, MT 59324-8705

Wolff Ranch Inc.
1751 Hwy 323
Ekalaka, MT 59324-8704

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOXELDER CREEK
BASIN 39E

Water Right Number: 39E 38425-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: WOLFF RANCH INC
1751 HWY 323
EKALAKA, MT 59324 8704

O'CONNOR RANCH LANDS LLC
203 KIM CURRY RD
EKALAKA, MT 59324 8705

Priority Date: DECEMBER 31, 1910

Type of Historical Right: USE

Purpose (use): RECREATION

Flow Rate: RUN-OFF

Volume: 17.04 AC-FT

Source Name: BOXELDER CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			1	2S	59E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	INSTREAM					
2			12	2S	59E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	INSTREAM					
3			13	2S	59E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	INSTREAM					
4			14	2S	59E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	INSTREAM					
5			23	2S	59E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	INSTREAM					
6			24	2S	59E	CARTER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	INSTREAM					
Period of Use:	JANUARY 1 TO DECEMBER 31					

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1				1	2S	59E	CARTER
2				11	2S	59E	CARTER
3				12	2S	59E	CARTER
4				13	2S	59E	CARTER
5				14	2S	59E	CARTER
6				23	2S	59E	CARTER
7				24	2S	59E	CARTER

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

38425-00

38427-00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOXELDER CREEK
BASIN 39E**

Water Right Number: 39E 38427-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: WOLFF RANCH INC
1751 HWY 323
EKALAKA, MT 59324 8704

O'CONNOR RANCH LANDS LLC
203 KIM CURRY RD
EKALAKA, MT 59324 8705

Priority Date: DECEMBER 31, 1910

Type of Historical Right: USE

Purpose (use): FISH AND WILDLIFE

Flow Rate: RUN-OFF

Volume: 17.04 AC-FT

Source Name: BOXELDER CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			1	2S	59E	CARTER
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<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1				1	2S	59E	CARTER
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